The plaintiff had been subjected to great mental pain, agony and humiliation as a result of the defendant's outrageous conduct. I would only quote Lawton L.J. in *Drane* v. *Evangelou* in this respect where he said:

"To deprive a man of a roof over his head in my judgment is one of the worst torts which can be committed. It causes stress, worry and anxiety. It brings the law into disrepute if people like the defendant can act with impunity in the way he did."

To the defendant's contention that the plaintiff cannot claim under this head because the damages will by definition exceed the profit, it must simply be said that on principle, the only essential criterion is whether the defendant's conduct is *calculated* to result in profit (the emphasis is mine). As Lord Devlin in *Rookes* v. *Barnard* said:

"Where a defendant with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrong doing will *probably* exceed the damages at risk, it is necessary for the law to show that it cannot be broken *with impunity.*" (the emphasis is mine).

As regards the principle of award of damages, the authorities are somewhat uncertain as to whether there should be separate award for each item of damages where the plaintiff had succeeded in the separate causes of action united in the same suit as in this case. *Mcgregor 14th. Edition Page 1031* citing *Barber* v. *Pigden*[8] is of the view that the court should either make a separate award but a single award will not be upset in the absence of prejudice or, a court has a discretion to make a single award but should make a separate award if a single award could lead to prejudice.

The 1st., 2nd. and 3rd. defendants shall be jointly and severally liable for the tort of deceit, but the 1st. and 2nd. defendants shall be jointly and severally liable for the breach of contract. The 2nd. defendant says that he is not personally liable for any damage because I had found that he was merely an agent of the 1st defendant. But, as the evidence showed, the 2nd. defendant had never disclosed that he was acting for the 1st. defendant, his principal, and under section 183 of the Contract Act, he is in that event, presumed to be personally liable on the contract. *Pollock & Mulla* (at Page 772, 9th. Edition) says:

"It is settled that an agent cannot claim indemnity in respect of acts which he knows to be unlawful, even if they are not criminal whether on an express or implied promise. Any such promise is void as being contrary to public policy."

And finally, section 186 says:

"In cases where an agent is personally liable a person dealing with him may hold either him or his principal or both of them liable."

Quite apart from the above principles, it is abundantly clear that the 1st. defendant was present when the 2nd. acted as his agent to commit fraud on the plaintiff, which thus makes him also liable, on the facts, jointly with the 2nd. defendant.

I would therefore in the circumstances award a sum of $973,000/– as general damages to the plaintiff with costs to be taxed. As I said earlier this sum represents the award for the tort of deceit only, but having considered the other claims, it would necessarily also cover them, if need be. This sum, as has already been stated, does not include the amount for exemplary damages. There shall be an award of interest as suggested by the defendants at 6% per annum on the $370,260/– (the price at July 1975) from 1975 till July 1982 and at 3% per annum on the Judgment sum from the date hereof till realization.

Claim allowed.

Solicitors: *Subra Naicker & Co., Allen & Gledhill; Shearn, Delamore & Co.*

SHARIFAH ASIAH v. ABDUL RAHMAN BIN LONG & ANOR.

[O.C.J. (Siti Norma Yaakob J.) May 11, 1983]
[Kuala Lumpur – Civil Suit No. 898 of 1977]

Damages – Quantum – Fracture of pubic and pelvic bones, 1/2" shortening of hip, injury to vagina; loss of one genital organ – General damages allowed at $30,000.

The plaintiff, a 15 year old student, claimed against the defendants for injuries sustained by her as a result of the accident for which the defendants conceded 100% liability. The plaintiff suffered the following injuries:

(1) fracture of her superior and inferior pubic bones which has since united but have left 1/2" shortening of her right hip. However, this shortening had in no way affected her gait. She walked normally and she had no difficulty in squatting down;

(2) fracture of the left acetabulum which had united;

(3) tear in the posterior vaginal wall which had left her without her hymen and her vagina badly scarred.

For the first 3 years after the accident she had great difficulty in controlling her urine. This was later corrected by surgery.

Held: the plaintiff would be allowed general damages of $30,000 being $20,000 for the fractures to the pelvic bones and $10,000 for loss of one of her genital organs, interest at 8% p.a. from date of service of writ to date of trial and $1,454.72 agreed special damages.

Cases referred to:

(1) *John Arthur Harper* v. *Lim Ah Nau* [1982] 2 M.L.J. xlviii.
(2) *Lee Yew Hoe* v. *Lee Bock Huat* [1980] 2 M.L.J. 271.

CIVIL SUIT.

R.K. Nathan for the plaintiff.
Satwant Kaur (Federal Counsel) for the defendants.

Cur. Adv. Vult.

Siti Norma Yaakob J.: In this action the defendants concede they are 100% to blame for the accident and they also agree to the special damages claimed in the sum of $1,454.72 at the usual rate of interest. The only issue is on quantum for the injuries suffered by the infant plaintiff which fall into 3 categories.

(1) Fracture of her superior and inferior pubic bones which has since united but have left ½" shortening of her right hip. Fortunately this shortening has in no way affected her gait, she walks normally and she has no difficulty in squatting down.

(2) Fracture of her left acetabulum which has also united well.

(3) Tear in the posterior vaginal wall which has left her without her hymen and her vagina badly scarred. Initially it affected her urinary tract and she had great difficulty in controlling her urine. For the first three years after the accident she had to be armed with ten panties before going to school and she was constantly urinating. However, this has been corrected by surgery and she is now able to control her urine and menstruate without complication. The loss of her genital organ had also prompted her Counsel to urge that over and above the amount that she will receive for the three injuries, I should also consider awarding her another sum for loss of her womanhood. Counsel likened the loss of her hymen to the position of one who has been raped of her virginity. I would not go that far as to hold that, as the offence of rape connotes a criminal violation on the person of a female by a male and in this case this unfortunate loss of her female organ was as a result of a motor accident. Of course I am not forgetting the fact that it was the defendants who had caused the accident and she shall be adequately compensated but not under the so-called loss to her womanhood. Furthermore the latest medical report P1 shows that the infant plaintiff suffered no permanent disability as she will be able to have a normal sexual life and to conceive and bear children.

Various authorities were cited to assist me in arriving at the amount of damages to be awarded for pain and suffering but I shall deal only with the one which I consider to fall on almost all fours with the injuries suffered by the plaintiff and which was decided nearer in point of time.

This is the Singapore case of *John Arthur Harper* v. *Lim Ah Nau*(1) where $20,000/- was awarded in April 1982 for a posterior dislocation of the right hip with a fracture of the acetabulum and a possible crack fracture of the inferior and superior pubic bones. The other cases were decided 7 or 8 years ago which I found to be not helpful as social and economic conditions were quite different from what they are today. See the case of *Lee Yew Hoe* v. *Lee Bock Huat*(2).

Based on the *John Arthur Harper's* case above, I award the plaintiff $20,000/- for the fractures to the pelvic bones with shortening and also the fracture of the left acetabulum. As for the injury to the vagina urethra and loss of her hymen, I consider that this injury must have caused profound fear, anxiety and trauma to the plaintiff as she had been under constant medical attention for almost seven years. During that period she had had a number of dilations done to her urethra (I accept the mother's evidence on this) and this was lastly followed by the corrective surgery that proved successful. Although she still complains that she menstruates irregularly, this may well be due to other factors. I notice the plaintiff is tall and lanky for a 15 year old but given time and good nourishment her menstrual cycle may sort itself out. For the pain and suffering that she had undergone and the loss of one of her genital organs, I would award her another $10,000/-.

There will then be judgment to the plaintiff for the sum of $30,000/- general damages, interest at

the rate of 8% per annum from date of service of writ to date hereof and $1,454.72¢ agreed special damages, interest at the rate of 4% per annum from date of accident to date hereof and costs. As the plaintiff is still a minor, I also direct that the judgment sum be deposited with the Public Trustee to be held on trust for her education, maintenance and other benefits until she reaches majority with liberty to apply.

Order accordingly.

Solicitors: *R.K. Nathan.*

PARVATHY & ORS. v. LIEW YOKE KHOON

[O.C.J. (Vohrah J.) June 23, 1983]

[Kuala Lumpur – Civil Suit No. P2805 of 1978]

Road Traffic – Fatal accident and injuries – Damages – Loss of dependency – Claim on behalf of estate of dental surgeon – Quantum.

Damages – Fatal accident – Loss of dependency – Claim by widow of dental surgeon.

The claims in this case were, namely,

(1) Loss of dependency of the wife and the 3 children including special damages;

(2) Loss to the estate of Dr. Kandiah Paranjothy deceased; and

(3) Damages for injuries to the wife and the 2 children concerned.

Held: (1) the court should not take into account the housing and entertainment allowances in computing the actual salary of the deceased. These were actually allowances to reimburse the deceased for expenses which he incurred or was expected to incur and they could by their very nature have been withdrawn at any time by the Government. The court would award $95,100.00 based upon the actual salary plus the specialist allowance which was a pensionable allowance and forms an integral part of a specialist's salary; 5 years' purchase of $2,100.00 according to the annuity Tables amounting to $109,104.00 and claim for loss of pension $29,800.00;

(2) the plaintiff should also be awarded $7,270.00 special damages for several items lost by the plaintiff because of the defendant's negligence which caused the plaintiff to lose consciousness resulting in her belongings being stolen or removed from the scene of the accident;

(3) claim for $9,326.35 being the sum actually incurred in extracting the grant of Letters of Administration would also be allowed;

(4) general damages for pain and suffering and loss of amenities in respect of the children (a) Devan – $750.00 for the 3 lacerations (b) Anand – $1,000.00 for the 3 lacerations and haematoma and (c) Parvathy – $750 for her laceration. 8% interest from the date of service of the summons in respect of (a), (b) and (c) was also awarded.

(5) costs to the plaintiff as taxed or agreed.

Cases referred to:

(1) *Khoo See Moi* v. *Tay Teik Chang* [1970] 2 M.L.J. 249.

(2) *Tham Meng Fatt* v. *Utam Singh Omnibus Co. Ltd.* [1982] 2 M.L.J. 355.

CIVIL SUIT.

R.K. Nathan for the plaintiffs.
Y. Sodhy for the defendants.

Vohrah J. (delivering oral decision): Liability in these three suits having been admitted I should consider the claims under the following three heads, namely:

1. Loss of dependency of the wife and the 3 children including special damages;
2. Loss to the estate of Dr. Kandiah Paranjothy, deceased; and
3. Damages for injuries to the wife and the 2 children concerned.

But Counsel for the plaintiffs has confined their claims to loss of dependency including special damages and personal injuries and I shall therefore make my award under these two heads on the basis of the written submissions of both Counsel.

1) Claim for loss of dependency

I agree with Mr. Sodhy that the court should not take into account the housing and entertainment allowances in computing the actual salary of the deceased. These are actually allowances to reimburse the deceased for expenses which he incurred or was expected to incur and they could by their very nature have been withdrawn at any time by the Government. Accordingly the figures I am awarding under the different periods will be based upon the actual salary plus the specialist allowance which is a pensionable allowance and forms an integral part of a specialist's salary.

a) Loss of dependency at the rate of $1,500 per month when the deceased was in Superscale 'F' from date of death to end of February 1980 when he would have been promoted to Superscale 'E' (1.4.76 to 28.2.80 = 46 months) $1,500 x 46
= $69,000.00
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